

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARIO GARCIA,

Defendant.

NO. CR-06-096-LRS

**ORDER DENYING "MOTION"
FOR REDUCTION OF SENTENCE
(CRACK COCAINE)**

Defendant has sent the court a letter (Ct. Rec. 129) which it will construe as a Motion For Reduction Of Sentence Pursuant To 18 U.S.C. §3582(c)(2).

The Sentencing Guidelines for crack cocaine offenses have been amended. *Guidelines Manual* (2007), Appendix C, Amendment 706. The amendment adjusts downward by two levels the base offense level assigned to each threshold quantity of crack cocaine (Cocaine Base) listed in the Drug Quantity Table in §2D1.1 and provides a mechanism for determining the Guideline range for offenses involving crack cocaine and other substances. This amendment became effective on November 1, 2007. As of March 3, 2008, time reductions for crack cocaine offenders sentenced prior to November 1, 2007 are authorized pursuant to 18 U.S.C. §3582(c)(2). *U.S. v. Ross*, 511 F.3d 1233, 1237 n. 2 (9th Cir. 2008).

Defendant pled guilty to Distribution of 5 Grams or More of a Mixture or Substance Containing Cocaine Base (Count 1 of Superseding Indictment) and on September 13, 2007, was sentenced to a term of 108 months imprisonment. This was a guideline sentence. The applicable guideline range before any departures

**ORDER DENYING MOTION
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1 was 188 to 235 months derived from a Total Adjusted Offense Level of 31 and a
2 Criminal History Category of VI. The court adopted the Base Offense Level of 28
3 found by the author of the pre-sentence report based on the quantity of drugs
4 involved. Defendant, however, received a Career Offender enhancement pursuant
5 to U.S.S.G. § 4B1.1(a) and (b) which put him at an offense level of 34 and a
6 Criminal History Category of VI.¹ A three level reduction for acceptance of
7 responsibility left the Defendant with a Total Adjusted Offense Level of 31 . In
8 order to impose a 108 month sentence within the guidelines, it was necessary for
9 this court to depart seven levels to a Total Adjusted Offense Level of 24 with a
10 guideline range of 100 to 125 months. This was a departure authorized by the
11 guidelines. Defendant did not receive a non-guideline sentence.

12 Because the Defendant was sentenced as a Career Offender, his guideline
13 range is unaffected by Amendment 706. In other words, the enhanced offense
14 level of 34 for being a career offender is not subject to the two level departure
15 authorized by Amendment 706. Defendant's guideline range is not lowered as a
16 result of Amendment 706. The enhancement to a level 34 is not based on the
17 quantity of drugs involved, but rather on the Defendant being at least 18 years old
18 at the time he committed the offense of conviction (Distribution of 5 Grams or
19 More of a Mixture or Substance Containing Cocaine Base), the instant offense was
20 a felony that was a controlled substance offense, the Defendant had at least two
21 prior felony convictions of either a crime of violence or a controlled substance
22 offense, and the statutory maximum for the offense of conviction was "25 years or
23 more." See U.S.S.G. §4B1.1(a) and (b); see also *U.S. v. Riviera*, _____ F.Supp.2d
24 _____, 2008 WL 576764 at * 3-4.

26
27 ¹ Based on the number of criminal history points assigned to the Defendant
28 (19), it appears the Defendant would have been in Criminal History Category VI
even without the Career Offender enhancement.

1 Accordingly, Defendant's Motion For Reduction Of Sentence Pursuant To
2 18 U.S.C. §3582(c)(2) (Ct. Rec. 129) is **DENIED**.

3 **IT IS SO ORDERED.** The District Executive shall forward copies of this
4 order to the Defendant at Federal Detention Center, Reg. #11653-085, Unit DB,
5 P.O. Box 13900, Seattle, WA 98198-1090, and to Assistant U.S. Attorney Ronald
6 W. Skibbie, Esq.

7 **DATED** this 17th day of March, 2008.

8 *s/Lonny R. Suko*

9 _____
10 LONNY R. SUKO
United States District Judge